

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MONIQUE R. HARRIS,

Plaintiff and Appellant,

v.

AMY KENNEDY et al.,

Defendants and Respondents.

E052411

(Super.Ct.No. CIVSS803215)

OPINION

APPEAL from the Superior Court of San Bernardino County. Frank Gafkowski, Jr., Judge. (Retired judge of the former Mun. Ct. for the Southeast Jud. Dist. of L.A., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Monique R. Harris, in pro. per., for Plaintiff and Appellant.

Jean-Rene Basle, County Counsel, James H. Thebeau, Deputy County Counsel, for Defendants and Respondents.

The trial court sustained the demurrer of defendants and respondents County of San Bernardino, San Bernardino County Sheriff's Department and Amy Kennedy (collectively, "defendants") to the second amended complaint (SAC) of plaintiff and appellant Monique R. Harris, and plaintiffs Stephen A. Harris, Ozelia B. Harris, and Kalimba A. Harris (collectively, "plaintiffs"), without leave to amend.¹ The court entered a judgment of dismissal thereafter. Plaintiffs appealed and we affirmed the judgment in case No. E048095. (*Harris v. San Bernardino County Sheriff's Dept.* (April 27, 2010, E048095) [nonpub. opn.])

Defendants thereafter moved for attorney's fees.² The trial court granted defendants' motion and ordered plaintiffs to pay attorney's fees in the amount of \$34,078.60. Harris appeals, contending the trial court erred in neglecting to find she maintained the action with good cause, that attorney's fees are not available in federal civil rights actions unless the court deems them frivolous, and the court erred in awarding attorney's fees in the amount it did. We affirm the judgment, because Harris has failed to provide this court with a record sufficient to review her appellate contentions.

¹ Monique Harris is the only remaining plaintiff in this appeal. The other plaintiffs were dismissed pursuant to this court's order dated February 14, 2011.

² Harris has failed to include this crucial motion in the record on appeal, which we will address later in this opinion.

FACTUAL AND PROCEDURAL HISTORY

A. PRIOR APPEAL³

In an affidavit in support of an arrest warrant submitted on August 15, 2007, Deputy Sheriff Amy Kennedy averred Harris approached the security screening area of the San Bernardino County Courthouse at approximately 4:00 p.m. on August 14, 2007.⁴ The attending security guard informed Harris the courthouse was closed. Nevertheless, Harris proceeded to walk through the metal detectors; she activated the security alarms. Despite being ordered three times to return to the screening area by the security guard, Harris continued to walk into the building, approaching the civil filing window. The security officer notified sheriff's deputies. Thereafter, the security guard twice again directed Harris to return to the screening area; Harris failed to comply. Harris left the courthouse prior to the arrival of the sheriff's deputies.

³ On our own motion, we take judicial notice of the record in the prior appeal, case No. E048095. (Evid. Code §§ 452, subd. (d) & 459, subd. (b).) Harris's statement of facts necessitates the taking of judicial notice of the record in the prior case because she discusses, at length, the facts contained in that record, but did not designate the documents in that record as part of the record in this appeal, nor did she request that we take judicial notice of the record in the prior case. In fact, she fails to support any of her factual assertions by citation to the record throughout her entire statement of facts. (Cal. Rules of Court, rule 8.204(a)(1)(C) ["Each brief must . . . [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears."].)

⁴ Upon defendants' request the trial court took judicial notice of the affidavit in support of the search warrant, the first amended complaint filed against Harris, a notice of exoneration of bail bond in Harris's name, a plea agreement, the register of actions of the misdemeanor action against Harris, and the minute order from entry of Harris's plea.

The next day the security officer informed Deputy Kennedy that Harris had returned. Deputy Kennedy contacted Harris. Harris admitted she went through security without completing the security process because she was in a hurry. Harris, in a declaration attached to plaintiffs' opposition to a demurrer, admitted she was interviewed by Deputy Kennedy on August 15, 2007; she declared the only identifying information requested of her was her first name, last name, and address. Deputy Kennedy never requested Harris's middle name, date of birth, or any identification.

In the affidavit, Deputy Kennedy requested a warrant issue for the arrest of one "Monique Harris" with a date of birth of May 13, 1975, for entering a restricted area without being properly screened in violation of San Bernardino County Code 27.1303. However, in a declaration in support of an arrest warrant filed on August 17, 2007, Deputy Kennedy alleged probable cause for the arrest of one "Monique Shanta Harris," likewise with a date of birth of May 13, 1975.⁵ A judge issued a misdemeanor warrant of arrest on August 21, 2007, in the name of "Monique Shanta Harris" with a birth date of May 13, 1975, residing at 7282 Abigail [*sic*] Place in Fontana, California. The warrant further described its subject as a female with brown eyes, 5 feet 7 inches tall, and weighing 125 pounds. Harris's middle initial is "R," she resided at 7284 Abigail Place, Fontana, California and was 5 feet 10 inches tall, weighing 135 pounds, with black hair and brown eyes. Harris's date of birth was August 3, 1974. On August 21, 2007, Deputy

⁵ Upon request by plaintiffs the trial court also took judicial notice of the warrant of arrest, the declaration in support of the arrest warrant, a DMV record containing a description of Harris, Harris's arrest/booking application, plaintiffs' claims against the county, and the county's denial of plaintiffs' claims.

Kennedy arrested Harris at her residence at 7284 Abigail Place in Fontana, California in front of her family.

The People filed a first amended misdemeanor complaint on November 15, 2007, charging Harris with one count of entry into a restricted area without being screened, in violation of San Bernardino County Code 27.1303. On February 6, 2008, plaintiffs made claims against the county for the false arrest of Harris. On February 15, 2008, in a plea bargain, Harris pled nolo contendere to an interlineated count 2 charge of fighting/noise/offensive words; the count 1 charge was dismissed. Harris was ordered to pay fines totaling \$344. On February 20, 2008, plaintiffs' claims were rejected.

On August 12, 2008, plaintiffs filed a first amended complaint against defendants alleging nine causes of action. The trial court sustained defendants' demurrer to the first amended complaint with leave to amend. On September 23, 2008, plaintiffs filed their SAC alleging causes of action for conspiracy to violate civil rights under section 242 of title 18 of the United States Code; deprivation of rights under 42 United State Code section 1983; false arrest; assault and battery; trespass to land; intrusion upon seclusion; negligent hiring and retaining; negligent training and supervision; negligent performance of duties; and intentional infliction of emotional distress. Plaintiffs requested relief in the aggregate amount of \$250,000,000 in compensatory damages and \$300,000,000 in punitive damages. Defendants demurred on the grounds they were immune from suit pursuant to Civil Code section 43.55 and that Harris's conviction barred her complaint. In a memorandum of points and authorities in support of their demurrer, defendants additionally asserted the SAC contained allegations not set forth in plaintiffs' government

tort claims. The court sustained the demurrer without leave to amend. On appeal from the judgment thereof, we affirmed the court's order to sustain the demurrer without leave to amend.

B. CURRENT APPEAL

On August 6, 2010, defendants moved for an award of attorney's fees. On September 7, 2010, plaintiffs filed opposition to the motion. On October 6, 2010, the trial court held a hearing on the motion. The court engaged in the following colloquy with defense counsel:

“[Defendants' Counsel]: . . . The only issue is whether they maintained the action upon reasonable cause.

“The Court: They maintained the action.

“[Defendants' Counsel]: Upon reasonable cause.

“The Court: That is the basis of the motion. [¶] I am going to grant the motion”

The court then engaged in the following colloquy with Harris:

“[Harris]: Is the Court saying that we did not maintain the action in good faith?

“The Court: I am ruling on the motion that is before the Court and it is granted; that is the Court's ruling.”

On October 28, 2010, the court signed the order granting defendants' motion for attorney's fees, which read as follows: “Having heard oral argument and having considered the moving papers of defendants, including the attached declaration and exhibits A-H, and the plaintiffs' opposition IT IS HEREBY ORDERED, ADJUDGED

AND DECREED that the Defendants' Motion for Attorney Fees is GRANTED pursuant to [Code of Civil Procedure section] 1021.7 and defendants are awarded \$34,078.60 against plaintiffs jointly and severally."

DISCUSSION

Harris contends the court erred in awarding defendants' attorney's fees because it did not render a finding that plaintiffs did not maintain their action in good faith and with reasonable cause, that courts cannot award attorney's fees in federal civil rights actions unless they explicitly find them frivolous, and that the court erred in computing and awarding the attorney's fees in the amount requested. As noted above, we cannot reach the issues raised by Harris because she failed to include defendants' motion for attorney's fees in the record on appeal.⁶

"As a threshold matter, we conclude that appellant has forfeited any challenge to the order . . . due to [her] failure to provide an adequate record." *Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

⁶ This court filed the record in this case on May 24, 2011. On July 22, 2011, Harris requested we augment the record to include the signed order granting defendants' motion for attorney's fees, which we granted on August 11, 2011. Harris filed her opening brief on December 28, 2011. Defendants' filed their response on February 14, 2012, in which they argue the appeal should be dismissed due to Harris's failure to include their motion for attorney's fees in the record on appeal. Harris failed to file a reply brief and we deemed the case fully briefed on March 8, 2012. On April 2, 2012, Harris filed a motion to augment the record to include defendant's motion for attorney's fees. On April 23, 2012, we denied the motion noting Harris "fails to provide any explanation for the delay in the augmentation request. Further, there is potential prejudice to the [defendants], who have filed their . . . brief in reliance on the record presently on file."

“It is the duty of an appellant to provide an adequate record to the court establishing error. Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.]’ [Citation.] This principle stems from the well-established rule of appellate review that a judgment or order is presumed correct and the appellant has the burden of demonstrating prejudicial error. [Citations.] By failing to provide an adequate record, appellant cannot meet [her] burden to show error and we must resolve any challenge to the order against [her]. [Citation.]” (*Hotels Nevada v. L.A. Pacific Center, Inc.*, *supra*, 203 Cal.App.4th at p. 348.)

Even to the extent we can review Harris’s contentions, we would find no error. We review a decision to award attorney’s fees and costs under Code of Civil Procedure section 1021.7 for abuse of discretion. (*Salazar v. Upland Police Dept.* (2004) 116 Cal.App.4th 934, 948 (*Salazar*).) Here, although the court made no explicit finding plaintiffs maintained their action without good faith or reasonable cause, the discussion between the court and defense counsel, and the court and Harris, make it implicitly clear this was precisely the factual finding the court rendered. The court expressly acknowledged the only issue before it was whether plaintiffs maintained their action in good faith. Directly after acknowledging that was the basis of the motion before it, the court granted the motion. Moreover, the order granting the motion explicitly references Code of Civil Procedure section 1021.7, which expressly denotes the court must find “the action was not filed or maintained in good faith and with reasonable cause.” Thus, the court impliedly found plaintiffs did not maintain their action in good faith and with reasonable cause.

We cannot find the court abused its discretion in rendering such a finding. As we held in our prior opinion, “none of plaintiffs’ causes of action were well taken” because Harris was the person for whom the warrant had issued, Harris admitted she was the person who committed the conduct for which she was arrested, Harris pled nolo contendere to a charge derived from that activity, and Harris failed to establish Deputy Kennedy acted with malice. Therefore, the court acted within its discretion in granting defendants’ motion for attorney’s fees.

As to Harris’s other contentions, we note that not all of her causes of actions were based on federal civil rights violations; thus, defendants’ motion for attorney’s fees could have been predicated only on attorney’s fees expended in defense of her other causes of action. Similarly, without the motion for attorney’s fees we have no way of determining whether defendants requested duplicative fees or computed the fees incorrectly. Thus, Harris’s failure to include the motion in the record precludes our review of these issues.

DISPOSITION⁷

The judgment is affirmed. In the interest of justice, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.

⁷ In their respondents' brief, defendants moved for sanctions based upon their contention Harris's appeal is frivolous. Defendants failed to file a separate motion containing points and authorities and a declaration in support thereof; therefore, we deny defendants' motion for failure to comply with the Rules of Court. (Cal. Rules of Court, rules 8.54(a) & 8.276(b).)